

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

JAB PRODUCE, INC.	:	
	:	
Plaintiff	:	
	:	
v.	:	Civil Action No. 1:08-CV-01899
	:	Hon. Milton Shadur
BIMEX, INC. a/t/a	:	
Roselle International Food Market, et al.	:	
	:	
Defendants.	:	

**SECOND SUPPLEMENTAL AFFIDAVIT OF MARY JEAN FASSETT IN
SUPPORT OF PLAINTIFF'S REQUEST FOR ATTORNEYS' FEES**

Mary Jean Fassett, one of the attorneys for Plaintiff, JAB Produce, Inc., submits the following supplemental affidavit in support of Plaintiff's *reduced* request for attorneys' fees:

1. I was originally admitted to practice in the Commonwealth of Virginia in 1987. I have been admitted to practice before several U.S. District Court bars, including this Court in 2003. I have practiced commercial and other civil litigation continuously since my admission, and have since 1994 concentrated my practice in matters related to The Perishable Agricultural Commodities Act ("PACA").

2. I am a member of the Washington, D.C. firm of McCarron & Diess, which concentrates its practice in PACA matters, and have performed all work noted on the attached billing statement myself. My standard billing rate is currently \$285.00 per hour. I am familiar with the rates charged by other attorneys of similar practice areas and tenure, and believe \$285.00 per hour to be a fair and reasonable rate to award attorneys of my specialty and tenure for the type of work I performed in this matter.

3. I have reviewed my files and time records for this matter, and confirm that the attached billing statements (Exhibit 1 hereto) are true and accurate accounts of time spent by McCarron & Diess in this action as PACA counsel for JAB Produce, Inc. from December 1,

2007 through June 30, 2008. The billing statements from my local counsel, William B. Kohn, Esq., previously attested to by Mr. Kohn regarding accuracy of time spent, are true and accurate copies of the billing statements received from Mr. Kohn in this action.

4. I have circled all time and cost entries on my billing statements and Mr. Kohn's billing statements that are related to the settlement reached with defendants Bimex Inc. and Zbigniew Kruczalak in this matter and deducted them from the total bills. The amount of \$1,254.00 has been deducted from the fees and costs incurred by McCarron & Diess, leaving a reduced balance due of attorneys' fees and costs in the amount of \$2,515.94. The amount of \$892.00 has been deducted from the fees and costs incurred by William B. Kohn, leaving a reduced balance due of attorneys fees and costs in the amount of \$770.00.

5. The first entry on McCarron & Diess' first billing statement of December 31, 2007, has been questioned by the Court in its Memorandum Order of August 4, 2008. Upon receiving notice from Plaintiff on December 4, 2007 of their PACA trust claim against defendants, I conducted a search of PACER to see if any other lawsuits asserting claims under the trust provisions of PACA, were pending against defendants herein. In my experience, the entry of a temporary restraining order in a PACA trust proceeding is often a reason why other produce suppliers and trust creditors do not receive payment from a debtor. Moreover, the PACA trust *res* is for the benefit of all trust beneficiaries, not merely those who win the race to the courthouse door. Accordingly, when my search on PACER revealed that another lawsuit styled as *Anthony Marano Company v. Bimex, Inc., Mirosław Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak, Civil Case No. 1:07-cv-06382* (hereinafter, "The Marano Action"), was pending against the same defendants, I notified both the defendants and counsel for plaintiff in the Marano action of JAB Produce, Inc.'s PACA trust claim against defendants.

6. The total amount of attorneys' fees and costs incurred by Plaintiff exclusive of charges incurred related to the settlement reached with defendants Bimex, Inc. and Zbigniew Kruczlak, is \$3,285.94 as set forth on the attached billing statements of McCarron & Diess and William B. Kohn. *See Exhibit 1.*

7. Plaintiff requests an award of 25% of the \$3,285.94 in attorneys' fees and costs incurred in this matter against defendant, Mirosław Kubas, or \$821.49. A revised chart showing the remaining principal balance, prejudgment interest, and attorneys fees sought to be awarded against defendant Kubas is attached as Exhibit 2.

Pursuant to 28 U.S.C. 1746, I certify under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

August 14, 2008
Dated

s/ Mary Jean Fassett
MARY JEAN FASSETT

PACA Counsel for Plaintiff

EXHIBIT 1

MCCARRON & DRESS

Suite 310
4900 Massachusetts Avenue, NW
Washington, DC 20016
202-364-0400

3769.00
less (1254.00)
2515.00
due
7/31/08
mjj

fees + costs
related to
settlement
with other
defendant.

Attn: Steve Serck
JAB Produce
Chicago Intl. Produce Market
2404 S. Wolcott Ave.
Unit 23
Chicago, IL 60608

Statement Date: December 31, 2007
Statement No. 4243
Account No. 536.006
Page: 1

RE: v. Bimex d/b/a Roselle International

Payments received after 12/31/2007 are not included on this statement.

Fees

		<u>Hours</u>	
12/04/2007			
MJF	Review facsimile from client; review PACER to see if any actions pending against defendant; review Marano case docket; prepare demand letter to defendant with cc to Marano's counsel.	0.70	199.50
12/06/2007			
MJF	Tele conference with Roselle Intl; facsimile to JAB re same.	0.25	71.25
12/07/2007			
MJF	Tele conference with Roselle re demand letter	0.20	57.00
12/10/2007			
MJF	Tele conference with JAB re discussions with Roselle re paying off PACA debt owed to JAB	0.10	28.50
	For Current Services Rendered	1.25	356.25

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Mary Jean Fassett	1.25	\$285.00	\$356.25

Total Current Work 356.25

Balance Due \$356.25

Please note your account number on your payment.
Please call if you have any questions.

MCCARRON & DIESS

Suite 310
4900 Massachusetts Avenue, NW
Washington, DC 20016

202-364-0400

Attn: Steve Serck

JAB Produce
Chicago Intl. Produce Market
2404 S. Wolcott Ave.
Unit 23
Chicago, IL 60608

Statement Date: January 31, 2008
Statement No. 4635
Account No. 536.006
Page: 1

RE: v. Bimex d/b/a Roselle International

Payments received after 01/31/2008 are not included on this statement.

Previous Balance \$356.25

Fees

		<u>Hours</u>	
01/04/2008			
MJF	Email to JAB re status of weekly payments	0.10	28.50
01/17/2008			
MJF	Review Marano court docket and dismissal order; email to client re status.	<u>0.20</u>	<u>57.00</u>
	For Current Services Rendered	0.30	85.50

Recapitulation

	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
<u>Timekeeper</u> Mary Jean Fassett	0.30	\$285.00	\$85.50

Total Current Work 85.50

Payments

01/29/2008	Payment 1/18/08 #16609	-356.25
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Balance Due \$85.50

Please note your account number on your payment.
Please call if you have any questions.

MCCARRON & DIESS

Suite 310
4900 Massachusetts Avenue, NW
Washington, DC 20016

202-364-0400

Attn: Steve Serck

JAB Produce
Chicago Intl. Produce Market
2404 S. Wolcott Ave.
Unit 23
Chicago, IL 60608

Statement Date: March 1, 2008
Statement No. 5514
Account No. 536.006
Page: 1

RE: v. Bimex d/b/a Roselle International

Payments received after 03/01/2008 are not included on this statement.

Previous Balance	\$85.50
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Payments

02/28/2008	Payment 2/15/08 #16861	-85.50
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Balance Due	<u>\$0.00</u>
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Please note your account number on your payment.
Please call if you have any questions.

MCCARRON & DIESS

Suite 310
4900 Massachusetts Avenue, NW
Washington, DC 20016

202-364-0400

Attn: Steve Serck

JAB Produce
Chicago Intl. Produce Market
2404 S. Wolcott Ave.
Unit 23
Chicago, IL 60608

Statement Date: March 31, 2008
Statement No. 5800
Account No. 536.006
Page: 1

RE: v. Bimex d/b/a Roselle International

Payments received after 03/31/2008 are not included on this statement.

Fees

		<u>Hours</u>		
03/07/2008				
MJF	Demand letter to Roselle Intl	0.30		85.50
03/30/2008				
MJF	Research PACER for any pending lawsuits against defendants; research home addresses for individual defendants; email to client re status and whether JAB wishes to file suit.	0.40		114.00
	For Current Services Rendered	0.70		199.50
	Recapitulation			
Timekeeper		<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Mary Jean Fassett		0.70	\$285.00	\$199.50
	Total Current Work			199.50
	Balance Due			<u>\$199.50</u>

Please note your account number on your payment.
Please call if you have any questions.

MCCARRON & DIESS

Suite 310
4900 Massachusetts Avenue, NW
Washington, DC 20016

202-364-0400

Attn: Steve Serck
JAB Produce
Chicago Intl. Produce Market
2404 S. Wolcott Ave.
Unit 23
Chicago, IL 60608

Statement Date: April 30, 2008
Statement No. 6179
Account No. 536.006
Page: 1

RE: v. Bimex d/b/a Roselle International

Payments received after 04/30/2008 are not included on this statement.

Previous Balance \$199.50

Fees

			<u>Hours</u>	
04/02/2008				
	MJF	Prepare complaint, summonses, civil cover sheet and attorney appearance forms	1.50	427.50
	MJF	Electronically file Complaint, Exhibits, Civil Cover Sheet and Summonses.	0.40	114.00
04/04/2008				
	MJF	Review summonses issued by clerk's office; email to local counsel re service address for registered agent for corporate defendant	0.20	57.00
04/09/2008				
	MJF	Review scheduling order and calendar status conference date	0.10	28.50
04/11/2008				
	MJF	Email from local re inability to serve certain defendants; facsimile to local of addresses and phone numbers	0.20	57.00
04/17/2008				
	MJF	Email from JAB re receipt of \$25 payment/reply to same.	0.10	28.50
	MJF	Tele conference with counsel for defendant Ziggy Kruczalak re proposed settlement offer.	0.20	57.00
04/22/2008				
	MJF	Review settlement offer from defendant Ziggy's counsel; forward to client; review client's response; reply to same	0.20	57.00
	MJF	Email from client re counter offer to make to defendant to settle matter	0.10	28.50
		For Current Services Rendered	3.00	855.00

Credit

JAB Produce
 Account No. 536.006
 RE: v. Bimex d/b/a Roselle International

Statement Date: 04/30/2008
 Statement No. 6179
 Page No. 2

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Mary Jean Fassett	3.00	\$285.00	\$855.00

Expenses

04/11/2008	Postage - Federal Express charges 3/08	28.44
	Total Expenses	28.44

Advances

04/02/2008	Filing fee - U.S. District Court	350.00
	Total Advances	350.00

Total Current Work	1,233.44
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Balance Due	<u>\$1,432.94</u>
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Please note your account number on your payment.
 Please call if you have any questions.

MCCARRON & DIESS

Suite 310
4900 Massachusetts Avenue, NW
Washington, DC 20016

202-364-0400

Attn: Steve Serck
JAB Produce
Chicago Intl. Produce Market
2404 S. Wolcott Ave.
Unit 23
Chicago, IL 60608

Statement Date: May 29, 2008
Statement No. 6539
Account No. 536.006
Page: 1

RE: v. Bimex d/b/a Roselle International

Payments received after 05/29/2008 are not included on this statement.

Previous Balance \$1,432.94

Fees

		<u>Hours</u>	
05/06/2008			
MJF	Email from/to local re status of serving defendants and any settlement; email to counsel for defendant Ziggy	0.20	57.00 <i>credit</i>
MJF	Internet research re more specific addresses and background info for defendants Ziggy and Kaz; facsimile of same to local counsel.	1.00	285.00
05/20/2008			
MJF	Email from/to local counsel re status of service on defendants; status conference tomorrow	0.20	57.00 <i>credit</i>
05/21/2008			
MJF	Emails from/to defense counsel for Bimex and Ziggy re settlement	0.25	71.25
MJF	Email to client re settlement proposal from defendant	0.20	57.00
05/22/2008			
MJF	Review JAB's email re settlement offer	0.10	28.50
	For Current Services Rendered	1.95	555.75

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Mary Jean Fassett	1.95	\$285.00	\$555.75

Total Current Work 555.75

Payments

05/05/2008	Payment 4/18/08 #17487	-199.50
05/28/2008	Payment 5/16/08 #17739	-1,233.44
	Total Payments	-1,432.94

JAB Produce
Account No. 536.006
RE: v. Bimex d/b/a Roselle International

Statement Date: 05/29/2008
Statement No. 6539
Page No. 2

Balance Due

\$555.75

Please note your account number on your payment.
Please call if you have any questions.

MCCARRON & DIESS

Suite 310
4900 Massachusetts Avenue, NW
Washington, DC 20016

202-364-0400

Attn: Steve Serck
JAB Produce
Chicago Intl. Produce Market
2404 S. Wolcott Ave.
Unit 23
Chicago, IL 60608

Statement Date: June 30, 2008
Statement No. 6922
Account No. 536.006
Page: 1

RE: v. Bimex d/b/a Roselle International

Payments received after 06/30/2008 are not included on this statement.

Previous Balance				\$555.75
		Fees	Hours	
05/29/2008	MJF	Prepare trust chart calculating interest and fees; email to/from client re counter-offer to defendant's settlement proposal.	0.40	114.00
05/30/2008	MJF	Email to client re status of settlement negotiations	0.10	28.50
06/03/2008	MJF	Draft settlement pleadings with Bimex and Defendant Kruczalak; email to/from local counsel; revise settlement pleadings.	1.10	313.50
	MJF	Email draft settlement pleadings to Bimex counsel for review and comment.	0.25	71.25
06/04/2008	MJF	Review defendants' proposed changes; email to defense counsel re issues with two proposed changes.	0.20	57.00
	MJF	Review defense counsel's changes to Stip and Order; reply; revise Stip and Order	0.40	114.00
06/05/2008	MJF	Email from/to opposing counsel re execution of Stipulation and Order	0.10	28.50
	MJF	Prepare JAB Rule 7.1 statement	0.10	28.50
06/09/2008	MJF	Email from/to opposing counsel re first payment under Settlement with defendant Kruczalak	0.10	28.50
	MJF	Email to JAB re first settlement payment to be received	0.10	28.50

credit

credit

JAB Produce
 Account No. 536.006
 RE: v. Bimex d/b/a Roselle International

Statement Date: 06/30/2008
 Statement No. 6922
 Page No. 2

		<u>Hours</u>	
06/10/2008			
MJF	Facsimile from client re first payment received; email to opposing counsel re status of settlement paperwork	0.10	28.50
06/17/2008			
MJF	File Stipulation and Order re payment plan with Bimex and Ziggy; facsimile to Bimex counsel of same	0.20	57.00
	MJF	0.75	213.75
06/18/2008			
MJF	Finish drafting memorandum of law in support of default judgment; draft affidavit of MJF re fees; draft affidavit of Steve Serck in support of motion for default.	0.70	199.50
06/27/2008			
MJF	Facsimile to counsel for Bimex attaching Stipulation and Order signed by Judge	0.10	28.50
	For Current Services Rendered	4.70	1,339.50

		<u>Recapitulation</u>		
	<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
	Mary Jean Fassett	4.70	\$285.00	\$1,339.50
Total Current Work				1,339.50

Payments

06/17/2008	Payment 6/6/08 #17939	-555.75
Balance Due		<u>\$1,339.50</u>

Please note your account number on your payment.
 Please call if you have any questions.

Law Offices of William B. Kohn
150 North Wacker Drive
Suite 1400
Chicago, IL 60606

$\$1662.00$
less ($\$892.00$) fees + costs related
to settlement with
other defendant

 $\$770.00$ due

MJK
7-31-08

Invoice submitted to:
JAB Produce, Inc.
c/o Mary Jean Fassett
McCarron & Diess
4900 Massachusetts Avenue N.W., Suite
310
Washington DC 20016

July 17, 2008
In Reference To: JAB Produce, Inc. v. Bimex, Inc., et al.
Invoice #10103

Professional Services

	Hrs/Rate	Amount
6/4/2008 WBK A104 Review/analyze Review/analyze MJ settlement docs; emails to/from MJ re: same	0.20 250.00/hr	50.00
6/10/2008 WBK A106 Communicate (with client) Email to/from MJ re receipt of signed Stip, etc. from Latimer	0.10 250.00/hr	25.00
6/17/2008 WBK A110 Manage data/files Docket Stip efiled by MJ; emails from/to MJ re: status, next steps	0.20 250.00/hr	50.00
6/18/2008 WBK A108 Communicate (other external) Cover letter to Judge Shadur deputy clerk encl. courtesy copy of Stipulation and Order; fax same to MJ, Latimer	0.25 250.00/hr	62.50
6/20/2008 WBK A109 Appear for/attend Court appearance on status, presentment of Stipulation and Order	1.00 250.00/hr	250.00
7/21/2008 WBK A108 Communicate (other external) Letter to Judge Shadur deputy clerk encl. motion for default judgment judge's copy (anticipated)	0.20 250.00/hr	50.00
7/24/2008 WBK A109 Appear for/attend Court appearance on motion for default judgment (anticipated)	1.00 250.00/hr	250.00
For professional services rendered	2.95	\$737.50
Previous balance		\$924.50

credit

JAB Produce, Inc.

Page 2

					<u>Amount</u>
Balance due					<u>\$1,662.00</u>
<u>Current</u>	<u>30 Days</u>	<u>60 Days</u>	<u>90 Days</u>	<u>120 Days</u>	
737.50	924.50	0.00	0.00	0.00	

Law Offices of William B. Kohn
 150 North Wacker Drive
 Suite 1400
 Chicago, IL 60606

Invoice submitted to:
 JAB Produce, Inc.
 c/o Mary Jean Fassett
 McCarron & Diess
 4900 Massachusetts Avenue N.W., Suite
 310
 Washington DC 20016

May 28, 2008
 In Reference To: JAB Produce, Inc. v. Bimex, Inc., et al.
 Invoice #10099

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
4/4/2008 WBK	A110 Manage data/files Download complaint, summons, etc.; prepare all for service; tel conf process server re: same; emails to/from MJ re: same	0.50 250.00/hr	125.00
4/7/2008 WBK	A110 Manage data/files E-file returns of service for Kubas, Dziewonski	0.10 250.00/hr	25.00
4/9/2008 WBK	A104 Review/analyze Review/analyze Shadur order re: preparation for initial status; email to/from MJ re: same, service; tel conf Shadur clerk re: same; letter to Defendants encl. same, summons and complaint copies; tel conf process server re: additional service info	0.70 250.00/hr	175.00
4/17/2008 WBK	A107 Communicate (other outside counsel) Tel conf Kruczalak atty Cary Latimer; email, tel conf MJ re: same, continued service efforts	0.25 250.00/hr	62.50
5/6/2008 WBK	A106 Communicate (with client) Emails to/from MJ re: status, service; review additional info faxed re: service; tel conf process server re: same	0.20 250.00/hr	50.00
5/20/2008 WBK	A106 Communicate (with client) Email to/from MJ re: status; tel conf atty Latimer (2) re: accepting service on behalf of Kruczalak, corporation; letter to Latimer confirming same, enclosing additional copies of Summonses and Complaint	0.55 250.00/hr	137.50
5/21/2008 WBK	A109 Appear for/attend Court appearance on status; tel conf MJ re: same	1.00 250.00/hr	250.00

credit

credit

cred. 7

JAB Produce, Inc.

Page 2

	<u>Hours</u>	<u>Amount</u>
For professional services rendered	3.30	\$825.00
Additional Charges :		
	<u>Qty/Price</u>	
4/7/2008 WBK E107 Delivery services/messengers	1	55.00
Process server fee -- Dziewonski	55.00	
WBK E107 Delivery services/messengers	1	40.00
Process server fee -- Kubas	40.00	
5/20/2008 WBK E107 Delivery services/messengers	1	4.50
Messenger delivery to Latimer	4.50	
Total additional charges		\$99.50
Total amount of this bill		\$924.50
Balance due		\$924.50

credit

EXHIBIT “2”

PACA Proof of Claim							
Invoice	Invoice	Payment	Date	Invoice	PACA Trust	Total	Total Claim
Number	Date	Due Date	Notice Given	Amount Due	Amount Due	Interest	through 7/18/08
614312	6/25/2007	7/5/2007	6/25/2007	382.00	\$ 313.50	\$ 58.76	\$ 372.26
615373	6/29/2007	7/9/2007	6/29/2007	\$ 485.00	\$ 485.00	\$ 89.94	\$ 574.94
615374	6/29/2007	7/9/2007	6/29/2007	\$ 29.00	\$ 29.00	\$ 5.38	\$ 34.38
615401	6/29/2007	7/9/2007	6/29/2007	\$ 40.00	\$ 40.00	\$ 7.42	\$ 47.42
615815	7/2/2007	7/12/2007	7/2/2007	\$ 376.00	\$ 376.00	\$ 69.17	\$ 445.17
615852	7/2/2007	7/12/2007	7/2/2007	\$ 584.50	\$ 584.50	\$ 107.52	\$ 692.02
615858	7/2/2007	7/12/2007	7/2/2007	\$ 40.00	\$ 40.00	\$ 7.36	\$ 47.36
616648	7/6/2007	7/16/2007	7/6/2007	\$ 981.50	\$ 881.50	\$ 160.41	\$ 1,041.91
616657	7/6/2007	7/16/2007	7/6/2007	\$ 12.00	\$ 12.00	\$ 2.18	\$ 14.18
616732	7/6/2007	7/16/2007	7/6/2007	\$ 93.50	\$ 93.50	\$ 17.01	\$ 110.51
617168	7/9/2007	7/19/2007	7/9/2007	\$ 794.00	\$ 794.00	\$ 143.31	\$ 937.31
617231	7/9/2007	7/19/2007	7/9/2007	\$ 44.00	\$ 44.00	\$ 7.94	\$ 51.94
618285	7/13/2007	7/23/2007	7/13/2007	\$ 648.00	\$ 648.00	\$ 115.68	\$ 763.68
618648	7/16/2007	7/26/2007	7/16/2007	\$ 476.75	\$ 476.75	\$ 84.40	\$ 561.15
619781	7/20/2007	7/30/2007	7/20/2007	\$ 886.50	\$ 886.50	\$ 155.19	\$ 1,041.69
619816	7/20/2007	7/30/2007	7/20/2007	\$ 31.00	\$ 31.00	\$ 5.43	\$ 36.43
619820	7/20/2007	7/30/2007	7/20/2007	\$ 87.00	\$ 87.00	\$ 15.23	\$ 102.23
619837	7/20/2007	7/30/2007	7/20/2007	\$ 90.00	\$ 90.00	\$ 15.75	\$ 105.75
620486	7/25/2007	8/4/2007	7/25/2007	\$ 1,114.75	\$ 1,114.75	\$ 192.39	\$ 1,307.14
621262	7/27/2007	8/6/2007	7/27/2007	\$ 532.00	\$ 532.00	\$ 91.29	\$ 623.29
621306	7/27/2007	8/6/2007	7/27/2007	\$ 42.00	\$ 42.00	\$ 7.21	\$ 49.21
621624	7/30/2007	8/9/2007	7/30/2007	\$ 604.00	\$ 604.00	\$ 102.75	\$ 706.75
	6/10/2008	6/20/2008	6/10/2008	\$ (1,500.00)	\$ (1,500.00)		\$ (1,500.00)
	7/1/2008	7/11/2008	7/1/2008	\$ (1,500.00)	\$ (1,500.00)		\$ (1,500.00)
	7/28/2008	8/7/2008	7/28/2008	(\$1,500.00)	(\$1,500.00)		(\$1,500.00)
Subtotal Invoices							\$3,705.00
Subtotal Interest							\$ 1,461.71
Attorneys' Fees (25% of \$3285.94)							\$ 821.48
Total							\$ 5,988.19